

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
TYLER DIVISION**

ESAW LAMPKIN,

Petitioner,

v.

DIRECTOR, TDCJ-CID,

Respondent.

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Case No. 6:21-cv-84-JDK-JDL

**ORDER ADOPTING REPORT AND RECOMMENDATION
OF THE UNITED STATES MAGISTRATE JUDGE**

Petitioner Esaw Lampkin, an inmate proceeding pro se, filed this federal petition for a writ of habeas corpus pursuant to 28 U.S.C. § 2254. The petition was referred to United States Magistrate Judge John D. Love for findings of fact, conclusions of law, and recommendations for disposition.

On March 3, 2021, Judge Love issued a Report and Recommendation recommending that the Court dismiss the petition as successive. Docket No. 6. Petitioner previously challenged this same conviction in Case No. 6:18-cv-623, which was dismissed with prejudice on October 5, 2020. Petitioner has not shown that he has received permission from the Fifth Circuit Court of Appeals to file a successive petition, as required by 28 U.S.C. § 2244(b)(3). Petitioner sought leave from the Fifth Circuit to file a successive petition, but that request was denied on May 31, 2019. *In re Lampkin*, Case No. 19-40255 (5th Cir. May 31, 2019).


Petitioner objected to the Report arguing the merits of his claims and stating that he objects to the Anti-Terrorism and Effective Death Penalty Act. He also

contends that this law should not apply to his petition because he is raising constitutional claims. Docket No. 8.

Where a party objects within fourteen days of service of the Report and Recommendation, the Court reviews the objected-to findings and conclusions of the Magistrate Judge de novo. 28 U.S.C. § 636(b)(1). In conducting a de novo review, the Court examines the entire record and makes an independent assessment under the law. *Douglass v. United Servs. Auto. Ass'n*, 79 F.3d 1415, 1430 (5th Cir. 1996) (*en banc*), *superseded on other grounds by statute*, 28 U.S.C. § 636(b)(1) (extending the time to file objections from ten to fourteen days).

Having conducted a de novo review of the Report and the record in this case, the Court has determined that the Report of the United States Magistrate Judge is correct, and Petitioner's objections are without merit. The Court therefore **OVERRULES** Petitioner's objections (Docket No. 8) and **ADOPTS** the Report and Recommendation of the Magistrate Judge (Docket No. 6) as the opinion of the District Court. Petitioner's petition for habeas corpus is hereby **DISMISSED WITH PREJUDICE** until Petitioner receives permission from the Fifth Circuit. Further, the Court **DENIES** a certificate of appealability.

So **ORDERED** and **SIGNED** this **25th** day of **March, 2021**.


JEREMY D. KERNODLE
UNITED STATES DISTRICT JUDGE